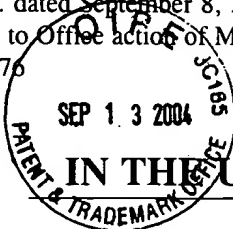


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PATENT
Appl. No. 09/884,300
Amdt. dated September 8, 2004
Reply to Office action of Mar. 3, 2004
01-9676

AF/3764
Customer Number
25189
PATENT TRADEMARK OFFICE



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of inventor(s):

KUO, Johnson

Serial Number: 09/884,300

Examiner: Stephanie R. Crow

Filed: 06/18/2001

Art Unit: 3764

Confirmation No.: 5886

For: FOLDING COLLAPSIBLE EXERCISING APPARATUS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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LETTER REGARDING ABANDONMENT OF APPLICATION AND REESTABLISHMENT OF ORIGINAL PATENT

Dear Sir:

An Office Action issued on March 18, 2004 with respect to the above-captioned reissue application. Applicant is allowing the present refusal to reissue the application to stand. As set forth below, applicant affirms that the original patent will be in full effect and force as is true currently.

Particularly, 35 U.S.C. § 252 particularly states that "the surrender of the original patent shall take effect upon the issue of the reissued patent..." Consequently, as the reissued patent has not issued, no surrender of the original patent has taken place. Additionally, under

37 C.F.R. 1.178(a), "if a reissue application is refused, the original patent, if surrendered, will be returned to the applicant upon request."

The following quotes are instructive with respect to the disposition the courts have taken regarding reissue applications.

As to the first contention, the law is clear that the surrender of a patent and the filing of a reissue application has no impact on the existence of that patent and places no disability on the owner to bring an action under 35 U.S.C. § 291. U.S. v. Marifarms, Inc. (D. Del. 1972) 345 F. Supp. 858, 861. The reissue statute as well as the Patent Office Rules require surrender of the original patent before a reissue patent may be granted. 35 U.S.C. § 251; Rule 171, 37 C.F.R. § 1.171. However, 35 U.S.C. § 252 specifically states that the surrender of the original patent does not take effect until the issuance of the reissue patent. [footnote 3 omitted] The physical delivery of the Howson patent to the Patent Office was in compliance with the statute and the Rules of Practice. It will not be deemed a surrender in the true sense unless and until the reissue application matures into a reissue patent. Finally, it has been specifically held that the act of tendering a patent in the course of a reissue application does not preclude plaintiff from maintaining a § 291 action on the basis of the original patent. Hazeltine Research, Inc. v. Firestone Tire & Rubber Co. (W.D. Va. 1971) 332 F. Supp. 408, 411, aff'd, 468 F.2d 1277 (4th Cir. 1972).

American Tel. & Tel. Co. v. Milgo Electronic Corp., 416 F. Supp. 951, 952-953 (D.N.Y., 1976)

A second reason the Court is not bound by the Patent Office's findings is the fact that the time for surrendering an original patent in reissue proceedings occurs when the reissue patent is granted. There is no surrender of the original patent if the reissue patent is rejected. Rather, the original patent stands as if no application had ever been made for a reissue. Allen v. Culp, 166 U.S. 501, 505, 41 L. Ed. 1093, 17 S. Ct. 644 (1897); U.S. v. Marifarms, Inc., 345 F. Supp. 858, 861 (D. Del. 1972). It is true that the reissue statute as well as the Patent Office Rules require surrender of the original patent before a reissue patent may be granted, 35 U.S.C. § 251; Rule 171, 37 C.F.R. § 1.171. However, 35 U.S.C. § 252, entitled "Effect of Reissue," specifically states that the surrender of the original patent does not take effect until the issuance of the reissue patent. American Tel. & Tel. Co. v. Milgo Electronic Corp., 416 F. Supp. 951 (S.D.N.Y. 1976). [footnote 1 omitted]

National Business Systems, Inc. v. AM International, Inc., 546 F. Supp. 340, 351 (D. Ill., 1982)


As result, Applicant awaits confirmation that the original patent is in continued in full effecting force. If no such confirmation is received, the law clearly indicates that such is the case.

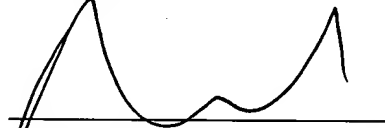
If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at the number listed below.

It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

Date: September , 2004


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Daniel M. Cislo, Reg. No. 32,973

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